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COMMISSIONER OF ADMINISTRATION

State of Louisiana
Division of Administration
Office of the Commissioner

July 16, 2014

John White
State Superintendent of Education
Louisiana Department of Education
1201 North Third Street
Baton Rouge, LA 70802

Subject: Results of Preliminary Contract Procurement Review

Dear Superintendent White:

We are proceeding with review of the procurement of selected educational testing services. In reviewing the DRC contracts, associated amendments and documentation, we have a number of observations discussed below. We would like to receive additional responses and explanations from DOE with regard to these matters.

In reviewing the documents, we reviewed the date the RFPs were released, when proposals were received, who proposers were and number of proposers, the date final award for a contract was made, to whom it was made, the basis of the award, the scope of the RFP, the point at which the contract and/or amendments appear to depart from the scope of the RFP (if applicable), and any identified deficiencies in the procurement process noted from documentation received.

The contracts that DOE entered into that were reviewed are:

- 1) Contract #603573 beginning September 1, 2003
- 2) Contract #626435 beginning July 1, 2005
- 3) Contract #626172 beginning July 1, 2005
- 4) Contract #626424 beginning July 1, 2005
- 5) Contract #704708 beginning July 1, 2011
- 6) Contract approved by BESE in June, 2014 meeting, no contract number has been assigned (this contract has not officially been submitted to OCR) contract term is July 1, 2014 - June 30, 2015.

1) **CFMS #603573 - iLEAP contract**

While reviewing the contract specification and deliverables of DRC contract #603573, we noted in Amendment #9 to the original contract, wording that mentioned anticipated new traditional assessments. This is also discussed in amendments 11 and 12 concerning transitional assessment test development. This information could not be located in the RFP. Please advise if you have any additional documentation that would support or otherwise show this work was within the scope of the RFP of this competitively bid contract. The subtle changes from amendment to amendment are tracked below:

- **Amendment 9** consistently indicates that the scope of services is related to the *current assessment program* and that the amendment is necessary *to ensure continuity of the current iLEAP program* as the State transitions to full implementation of the new assessment standards. With the exception of transitional assessment test development in the context of the current program, the Amendment does not identify any other service or supply to be provided or procured, nor does the amendment indicate that implementation of new assessment standards during the last year of the contract will not involve iLEAP. In fact, the 2014-2015 Deliverables/Payment Schedule indicates iLEAP, ASA, ASA LAA 2 and Grade 2 testing in the Spring of 2015.
- **Amendment 9** increased the contract amount by nearly \$21 million. In conjunction with amendment 9, amendment 10 then reduced the amount of the contract by \$2.8 million, removing ASA services. The net effect of the three year amendment was an addition of approximately \$18 million. The *additional* cost per year averaged \$5.8 M, fairly close to the annualized cost of the \$26.3 million contract over the previous 5 years (\$5.28 M per year), plus additional costs for various other tasks, including accelerated NRT reporting.
- **Amendment 10** eliminated Academic Skills Assessment, but still references the “current assessment program.” Additionally, the Deliverables/Payment Schedule indicates the provision of iLEAP tests in the Spring of 2015.
- **Amendment 11** still references “current assessment program, which includes development of test forms, printing, distributing and collecting materials, scoring and reporting, and all psychometric services for the iLEAP. Though the amendment indicates that during the transition DRC will develop new essay items and support services associated with item development, the amendment does not identify the subjects of these new items and the amendment is written in the context of the current assessment program. The development of new essay items in this context does not necessarily indicate a departure from the RFP. **However, if the new essay items are criterion referenced tests (CRT) instead of norm referenced tests (NRT) for ELA and Math, these new essay items may have departed from the RFP, which required NRT for ELA and Math.** Additionally, the Deliverables/Payables Schedule indicates the provisions of iLEAP tests in the Spring of 2015.

- **Amendment 12 appears to depart from RFP.** The amendment retains language about *transitioning* to a new assessment program, but it does not reference the “current assessment program” as with the other amendments. The amendment includes language regarding new ELA and Math iLEAP *forms* and the elimination of all NRT activities. This nuanced amendment language implies, but does not expressly explain that the RFP-required NRT for ELA and Math will not be used. As such, these new essay items for ELA and Math may have departed from the RFP, which required NRT for ELA and Math. Nevertheless, the Deliverables/Payment Schedule indicates the provision of iLEAP tests in the Spring of 2015. This is a subtle change that could have improperly departed from the scope of the RFP and would likely have materially impacted the initial review process.

2) **DRC Contract - CFMS #626435 - LEAP, etc. (Project B of RFP)**

LDOE awarded multiple contracts (3 total) from its 12/13/04 RFP. On June 16, 2005, Contract #626435 between DOE and Data Recognition Corporation (DRC), Contract #626424 between DOE and Measured Progress Inc, and Contract #626172 between LDOE and Pearson Educational Measurement were all signed by the parties.

We observed several points where contract #626424 appeared to go outside the scope of the RFP instead of amending both the beginning and end dates for the contract so it could still be for 6 years as advertised in the RFP. Contract #626424 added another year to the 6 years proposal due to Hurricanes Katrina and Rita. The LDOE amended the end date, because partial work occurred at the beginning of year one. LDOE did not amend the start date, making this contract 7 years in duration.

Contract #626424, Amendment 2, completely changed the training delivery methodology. This change may have affected the approach and amount bid by proposers had it been known, potentially resulting in a different winning proposer. Amendment 2 changed training in Math and Writing to two-day sessions instead of one-day sessions with more intensive follow-up as well as changing the total number of participants from 600 to 400. Amendment 3 made changes to the Louisiana Content Standards for the Arts training to 4, two-day sessions instead of 3, one-day sessions, decreased the number of participants per class (100 to 50), increased the number of participant days from 300 to 800, and increased to instruction and direction on how to deliver the workshop. If you have any additional information on these changes, please provide it.

For contract #626435, additional information needs to be provided for items added through the amendments for which LDOE was charged additional fees. A sampling of these items was compared to the RFP scope of services and the original contract,

and these additional items may have been contemplated in both the RFP and original contract. For example, loading GEE scores to LEAPWeb and LAA2 range finding in Amendment 1 are two additions that need further review.

Finally, the RFP directed that the contractor would be responsible for all travel reimbursement, meeting rooms and meals for various meetings, but does not mention compliance with PPM 49 State Travel Guide. This may have resulted in the state paying more for travel reimbursement and the procurement of meeting space/refreshments. Please provide information to show that these costs were within the State Travel guidelines.

- 3) **CFMS #704708**, June 8, 2011 Contract Between Louisiana Department of Education and Data Recognition Corporation; 7/1/11-6/30/15 - 4 year sole source contract: \$44,407,871.

Potential deficiencies noted in this contract and amendments (CFMS # 704708) include:

- In its requests for the sole source and the subsequent amendments, DOE indicated it would be performing services consistent with the 2005 contract (CFMS #626435). Our review shows that departures in the sole source contract from the services performed in CFMS #626435 were subtle and nuanced, with little to no supporting documentation.
- The award of the sole source contract was made upon DOE's representations that approval of the sole source request would provide continuity in the overall administration of the *current* statewide assessment program as the State moved toward full implementation of the common standards and the common assessments aligned with these standards. Continuity during the transition, according to DOE, would ensure that students, schools, and districts were measured in a consistent manner over time as DRC was under contract in CFMS #626435 to provide support services related to the statewide assessment program; award of the sole source to DRC would be a cost savings to the state; moving to new vendor would cause the state unnecessary startup costs; and, "[t]he estimated requirements covering the period of the contract are reasonably firm and continuing and such a contract will serve the best interests of the State by encouraging effective completion or otherwise promoting economies in state procurement." (Pastorek letter to S. Gillen 12-30-2010)
- If the award was based solely upon DOE's representations that a sole source award would be in the best interest of the program to continue with the same contractor to encourage completion or otherwise promote economies, the basis for the award departed from the permissible basis to grant a sole source award. Of even greater concern is that the subsequent amendments to the contract refute the factual basis upon which DOE requested the sole source.

- The sole source award to DRC did not comply with the Professional, Personal, Consulting and Social Services Code (PPCS Code), specifically La. R.S. 39:1496, and its corresponding regulations (LAC:V.142 (A)(2)) because the contract amount required it to be competitively procured through an RFP. It is evident from the documentation provided – and especially from the participation of multiple vendors every time this work has been competitively bid – that DRC was not the only source which could provide the services.
- Departures from the awarded contract commenced shortly after approval of the contract.
- In November 2011, DOE transmitted Amendment 1 to OCR for approval. On December 15, 2011, S. Gillen emailed Leslie Jewell (DOE) to find out whether DRC was the only vendor who could perform the additional scope.
- On December 22, 2011, Scott Norton responded to Ms. Gillen by summarizing the original scope, indicating that the amendment would include the development of test *forms* for English language arts and writing and mathematics in grades 3-8, field testing of new forms, and construction of *transitional tests*. Mr. Norton did not indicate whether DRC was the only vendor who could perform these additional services. Instead, Mr. Norton explained the purpose [of the amendment] was to increase the rigor and ensure better alignment of state assessments with the Common Core State Standards and the common state assessments that will be implemented in 2014-2015. Mr. Norton further explained that “[t]he transitional tests will be versions of the current assessments developed by DRC through this contract.” In sum, even though Mr. Norton did not say one way or another whether DRC was the only vendor who could provide these additional services, Mr. Norton notably failed to disclose to Ms. Gillen that Pearson Educational Measurement had performed the field tests in the previous RFP; he failed to point out how item development, field test form construction, and field testing differed from the administration of the current assessment program; and, he led OCR to believe the additional services were *not* a departure from the previously awarded services because the transitional tests would be versions of the *current* assessments.
- Pastorek’s letter of December 10, 2010 and Ollie Tyler’s 1-14-2011 letter to Sandra Gillen indicated that DRC would be performing the *same services* which DRC performed under CFMS #626435. Yet, Amendment 1 deviates from the scope performed by DRC under CFMS #626435 because DRC did not perform item development and field test administration for LEAP and GEE. That segment of the RFP was awarded to Pearson Educational Measurement. Therefore, if the basis for awarding the sole source contract to DRC was to allow DRC to continue to provide the services it provided under the expiring contract, Amendment 1 changed the scope of and basis for awarding the sole source contract. Additionally, even though the request for Amendment 1 was sent to OCR in November of 2011, the amendment was made retroactive to the start of the contract July 1, 2011. This sequence of events raises the question whether DOE intended to provide DRC with work previously performed by Pearson when DOE

requested the sole source award. At a minimum, it appears that DRC was awarded a second sole source contract through Amendment 1. Another question is whether DRC is subcontracting item development and field test administration. In 2005, DRC proposed to do Item Development and Field Test Administration for \$23,202,114. The increase in Amendment 1 for these services was \$1,230,512.

- In reviewing Amendment 3, Ms. P. Rice (OCR) requested justification from DOE regarding how the new services were within the scope of the original sole source approval. (May 30, 2013 letter from P. Rice to Leslie Jewell). Documents produced by DOE include a June 7, 2013 letter from Sarah Seifert of DRC to Jessica Baghian (DOE). In that letter, Ms. Seifert confirmed that Amendment 3 included services to be completed by DRC associated with the original contract under which the Amendment was executed; the scope of services included additional test development, psychometric, and accountability activities related to the LEAP and iLEAP assessments; and, that the "sole-source Amendment" should be granted because "DRC's systems and expertise from working on the current contracts is essential to performing the services included in the Amendment." (June 7, 2013 letter from S. Seifert to J. Baghian). On June 10, 2013, Ms. J. Baghian responded to Ms. Rice's request by re-stating the original scope of the contract and indicating that the services to be provided in the amendment would include additional test development, psychometric, and reporting activities related to Louisiana's statewide assessments, ensure alignment of state assessments with Common Core State Standards through updates and modifications to the current test forms as created by DRC per the contract. Additionally, M. Baghian stated that the amendment would ensure continuity in the administration of the current statewide assessment program. (June 10, 2013 letter from J. Baghian to P. Rice).
- Amendment 3 appears to deviate from the scope performed by DRC under CFMS #626435. DRC did not provide item development and administration of an online field test of ELA and Math multiple choice (MC) questions and constructed response (CR). The provision of that service does not appear to have been part of the 2005 RFP. Therefore, if the basis for awarding the sole source contract to DRC was to allow DRC to continue to provide the services it provided under the expiring contract (see Pastorek's letter to S. Gillen of 12-30-2010 and 1-14-2011 letter from Ollie Tyler to S. Gillen), Amendment 3 changed the scope of and basis for awarding sole source contract.
- The copy of the contract produced by DOE *blacked out* from Amendment 3 that portion in Attachment B (2012-2013 Deliverables/Payment Schedule for June 30, 2013) which stated, "all impact data have been reviewed prior to release of Spring reports; and the online Field Test of ELA and math items has been administered." The amendment did not decrease the additional \$930,000 for those services. The copy in OCR's file shows this information. The question is why was key information supplied to DOA blacked out?

- Amendment 4 added “new ELA and Math forms” but did not indicate whether or how the new ELA and Math forms differed from the previous ELA and Math forms
- The sole source contract does not appear to have advanced the promotion of economies made by Superintendent Pastorek as justification of the sole source request. The Assessment Administration contract awarded to DRC (CFMS #626435) cost the state \$76,810,717. In response to the 2005 RFP, Pearson submitted the lowest cost for that segment of the RFP (\$38,290,031) for six years, and was the second highest proposer for that segment with 78.30 points (DRC had 81.94 points). The amount of the sole source award to DRC was initially for \$44,407,871 for four years. With the four amendments the contract has increased to \$48,181,063. As such, the promotion of economies did not appear to occur.

4) **Contract between LDOE and DRC approved in the June, 2014 BESE Meeting,** June 6, 2014. This contract is presented by DOE as being for Professional Services; however, this is clearly a consulting services contract. DOE also documented it as being awarded by competitive selection. DOA was able to document that the RFP was issued December 2012; proposals due January 2013; award made March 2013. The Contract was awarded to Data Recognition Corporation (DRC) on March 14, 2013. The RFP allowed for one year contract with 2, one-year extension. The RFP further said the initial term was to be July 1, 2013; however, DOE changed start date to July 1, 2014, resulting in prices that were 18 months old. While the RFP did state that “Any of the standard project components specified in this RFP and in the winning proposal are subject to exclusion from any resulting contract at the discretion of the LDOE”--RFP also said dates “may” be adjusted on timelines and deliverables upon mutual consent; however, RFP indicated liquidated damages would be assessed for delay - this may have affected the proposals received and costs, since the start date was pushed back. Moreover, it was difficult to determine how the pricing was arrived at in the proposed contract. The RFP requested *itemized costs* for Social Studies, Science and Biology tests - the proposed contract *does not indicate these subject matters at all.*

Other Issues we noted in this contract:

- The contract was awarded within 3 months to DRC. The department requested a significant reduction in scope and a delay in start date by a year, a month after the award. This would have materially changed proposers' bids and should have resulted in the cancellation of this RFP and the initiation of a new RFP.
- According to DRC correspondence, on 6/23/14, DOE authorized DRC to start work 7/1/14, without having submitted any documentation to OCR.
- At the department's request, a little over a year after the RFP was first issued, the contract activities occur over 2 years instead of the one year specified in the RFP. This would have materially changed proposers' bids and should have

resulted in the cancellation of this RFP and the initiation of a new RFP. Moreover, the contract is for one year and does not mention second year, this is concerning since repricing was based on 2 year delivery.

- DRC submitted 2 revisions to their proposal based on department changes that were not afforded to other proposers.
- The RFP says for 2014-15 year, contract for 2015-16.
- The contract contains no deliverable dates for submission which may cause issues with making payments appropriately.
- The deliverables and scope of the contract are significantly different when compared to the RFP. The differences are so significant that questions exist as to whether the contract has any relationship to the RFP, especially considering that the contract does not reference the RFP nor does it have an order of precedence clause (Contract-RFP-proposal).
- Meetings moved from deliverables to performance measures, and we could not determine why. Not sure why that section is included as these items seem more like deliverables.
- RFP mentions Common Core, while the contract does not.
- Nothing about staffing is included in the contract, but staffing language is included in the RFP.
- Payment terms presented are different, RFP indicates bimonthly payments, while contract indicates monthly payments beginning in August and ending in June.
- The assessment guides were eliminated according to DRC; contract says assessment guides sample items included.
- Cost sheet did not ask for any particular # of test questions, but contract is based upon # of multiple choice items, extended response items, etc.

Conclusion

In summary, DOE does not appear to have been fully forthcoming in its representations to DOA regarding the contracts and the amendments to these contracts throughout the procurement process. It is incumbent upon DOE to provide complete, responsive, and accurate information to DOA in support of its request for approval of its contracts, the associated amendments, and its request for approval of its decision to award a multi-million dollar sole source contract to DRC. DOE appears to have departed from the scope of the RFPs through amendments to certain contracts, which may have affected the approach and amount bid by other proposers and resulted in a different winning proposer. This is evidenced by the departure from procurement requirements through a series of amendments that are worded with subtle, nuanced language.

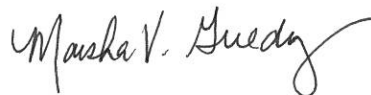
Mr. John White, State Superintendent of Education

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This matter is still under review, therefore these are only preliminary observations based upon a detailed review of the contract documents and associated supporting documentation in our files or supplied by DOE. Please provide responses to the questions and/or clarification to the issues noted above by contract and amendment number on or before close of business Thursday, July 17, 2014. The response requested should be delivered to the Office of the Commissioner to my attention at 1201 N. Third Street, Baton Rouge, LA, 70802, Suite 7-210, on the 7th floor of the Claiborne Building. If you have any questions regarding this request, please feel free to contact me at marsha.guedry@la.gov, or by phone at (225) 342-2900.

Sincerely,



Marsha V. Guedry, CPA
Internal Audit Administrator

Cc: Kristy Nichols, Commissioner of Administration
Ruth Johnson, Deputy Commissioner
Elizabeth Murrill, Executive Counsel
Paul Holmes, Interim Chief Procurement Officer
Pamela Rice, Interim Director, Office of Contractual Review
Carlos Romanach, DOA's Office of General Counsel